**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**

**CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.577 OF 2006
WITH
CIVIL APPLICATION NO.749 OF 2006

M/s.Sand Hills Finances And
Investments Explorers Ltd. ..Appellant.

V/s.

Municipal Corpn. for Gr.Bombay. ..Respondent.

Mr.S.A.Sawant for M/s.Sunil & Co. for appellant.

Mrs.Geeta Joglekar for BMC.

**CORAM: A.M.KHANWILKAR,J**

**DATE : AUGUST 9, 2006.**

**P.C. :**

1. Heard counsel for the parties. Perused the relevant documents on record.

2. The main grievance of the Appellant is that the Ward Officer himself had inspected the suit building in April, 1995 and certified that no unauthorised work was noticed. However, the suit notice under section 351 of the Act has been issued alleging unauthorised construction of additional room admeasuring 3.60 x 2.75 meters. with brick masonary walls ladi coba ladi slab over it. It is further stated in the suit notice that there is also extended W.C. in common passage of M/s. Sandhil Finance

Investment Exporters Private Ltd. According to the appellants, it is inconceivable that suit notice can be sustained in the fact situation of the present case.

. All these aspects are considered by the trial Court in the impugned Judgment, in particular from paragraph-6 onwards. I am in agreement with the conclusion reached by the trial Court that there is no evidence to establish the fact that suit structure was authorised or protected being in place before the datum line. The argument of the appellant clearly overlooks that the inspection was done by the Ward Officer in April, 1995, whereas the suit notice is issued in January, 2000. Obviously, suit structure must have been put up during the intervening period. The Onus is on the appellant to establish the fact that the suit structure is authorised structure or atleast protected structure as per the extant policy. That evidence is lacking in the present case. If it is so, there is no reason to depart from the conclusion reached by the Court below in rejecting prayer for Interim relief during the pendency of the suit. Hence, this appeal should fail.

3. The counsel for the appellant however,

submits that the appellant be granted liberty to move to the competent authority for regularisation of the suit structure. The appellant may make necessary representation for regularisation of the suit structure to the Executive Engineer, Building Proposal, City-I, within four weeks from today alongwith formal proposal through recognised architect, to be accompanied by necessary documents. If such application is filed, the competent authority shall finally dispose of the same within four weeks from the date of its presentation. Such application will have to be decided on its own merits in accordance with the law. The objection taken by the counsel for the Corporation that it is not possible to regularise such structure will have to be considered by the concerned authority. Till such representation is decided, no precipitative steps will be taken in respect of suit structure.

4. It is made clear that if the appellant fails to make representation as above mentioned within the specified time, it will be open to the Corporation to proceed against the suit structure in accordance with the law.

5. Appeal as well as civil application disposed

of on the above terms.